

## PATENT APPLICATION

042390.P10397

Remarks

This response is provided in reply to a Final Office Action mailed April 22, 2003 in the parent application. Claims 1-4 and 6-20, as selectively amended, remain in the application, and new claims 21-27 are hereby newly introduced. Applicant respectfully submits that support for the amendments and the new claims can be found in the originally filed specification, figures and/or claims and, as such, no new matter has been introduced. Accordingly, reconsideration of this application, as amended, is respectfully requested.

Objection to the Specification

In paragraph 1 of the Action, the Abstract was objected to as being too short and lacking detail, citing MPEP §608.01(b).

Applicant notes that the specification is in compliance with the legal requirements for the specification as provided in 35 USC and 37 CFR, and that the MPEP does not carry the force of law. Moreover, Applicant notes that the cited MPEP passage merely indicates that the abstract *should* include (one of) the enumerated five (1-5) elements. This in contrast to other elements of the MPEP that find specific statutory support, which are written to clearly denote that the requirement *must* be met.

Nonetheless, in an effort to conclude prosecution of this matter, Applicant has amended the Abstract, as provided above. Applicant respectfully submits that such amendment overcomes the basis for the objection, and requests that such objection be withdrawn.

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**§103(a) Rejection of Claims 1-4, 6-8, 11 and 13-15**

In paragraphs 2-4 of the Action, claims 1-4, 6-8, 11 and 13-15 were rejected as being unpatentable over a patent issued to Razavi, et al. (US 6,253,122) in view of a patent issued to Fanning, et al. (US 6,366,907) pursuant to 35 USC §103(a).

Without conceding the appropriateness of the combination, or adopting the characterization that the then pending claims were obvious in light of the cited references, Applicant has selectively amended claims 1, 11 and 16 to further distinguish the claimed invention over that of the cited references.

**The Razavi Reference**

Applicant maintains the characterization of the Razavi reference provided in prior responses. In particular, Applicant respectfully submits that the Razavi reference is merely directed to a software upgradable dashboard for an automobile. In this regard, Razavi teaches that a vehicle equipped with the Razavi dashboard may drive into a service station having a server within the service station LAN that may establish a connection with a vehicle sub-network, wherein the server in the service station LAN may be configured to extract service information, provide necessary software updates, and/or media content to elements of the vehicle sub-network (col. 15, lines 19). In this regard, Razavi may be characterized as teaching a vehicle sub-network designed to interface with select, pre-determined server(s) through wireless local area network (WLAN) facilities, that is, a conventional client/server wireless network.

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The Fanning Reference

Applicant maintains the characterization of the Fanning reference provided in prior responses. In particular, Applicant respectfully submits that the Fanning reference is directed to a real-time search engine to support the exchange of content between devices coupled with the real-time search engine implemented on a server within an application network (i.e., the Napster network) (see col. 3, lines 10-22; col. 4, lines 11-36; col. 6, lines 38-47; Figs. 1, 2 and 4). That is, in order to download a file from *anywhere*, the requesting device must first access the real-time search engine executing on a server within the Napster network to identify source locations for the requested file. Only after sources of the file are identified through the Napster search engine can a device then access the remote server or peer-device to download the requested file. In this regard, the Fanning reference fails to disclose or suggest a true, wireless peer-to-peer network, but rather, a modified client/server network that relies on multiple clients accessing a common server to support the exchange of information.

Claim 1

In contradistinction to the combination Razavi and Fanning references proposed in the Action, amended claim 1 is directed to a method for loading music into a music player comprising, at least in part:

establishing a wireless, peer-to-peer communication path(s) with a remote device(s) to request a music file without a priori knowledge of whether the music file resides on the remote device; and

receiving the requested music file through a wireless communication path from the remote device(s).

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Applicant respectfully submits that neither the Razavi nor the Fanning references, alone or in combination, disclose or suggest the exchange of music files through a true peer-to-peer wireless communication network, as provided in amended claim 1.

Rather, as presented above, both Razavi and Fanning require that the requesting device establish a connection with a predetermined server (i.e., Razavi's service station server, or Fanning's Real-time search engine server) in order to initiate a file request. Insofar as neither of the cited references disclose or suggest establishing a wireless, peer-to-peer communication path(s) with a remote device(s) to request a music file from that device without a priori knowledge of whether the music file resides on the device, Applicant respectfully requests that the §103(a) rejection thereof be withdrawn.

Claims 11 and 25

Applicant notes that claims 11 and 25 include elements similar in scope to those presented above in regard to claim 1, albeit in accordance with their respective embodiments. Accordingly, in addition to any independent bases of patentability, Applicant respectfully submits that claims 11 and 25 are likewise patentable over the Razavi and Fanning references by virtue of at least arguments analogous to those presented above in claim 1. Thus, Applicant respectfully requests that the §103 rejection of claim 11 be withdrawn.

Claims 2-4, 6-10 and 12-15, 26 and 27

Applicant notes that claims 2-4, 6-10 12-15, 26 and 27 each depend from patentable base claims 1, 11 and 25 as amended. Thus, in addition to any independent bases for patentability, Applicant respectfully submits that such claims are likewise patentable over the cited references

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by virtue of at least such dependence. Accordingly, Applicant respectfully requests that the §103(a) rejection of claims 2-4, 6-10 and 12-15 be withdrawn.

**§103(a) Rejection of Claims 9 and 12**

In paragraph 5 of the Action, claims 9 and 12 were rejected as being unpatentable over the Razavi and Fanning references in further view of a patent issued to Tosaya (US 6,323,893).

Without conceding the appropriateness of the combination or the obviousness argument, Applicant respectfully submits that the Tosaya reference was not cited as curing and does not, in fact, cure the deficiency in the teachings of the Razavi and Fanning references noted above. In particular, Tosaya fails to disclose or suggest a establishing a true, peer-to-peer wireless communication path(s) with a remote device to download a music file without a priori knowledge that the music file is available from the remote device.

Accordingly, Applicant respectfully submits that amended claims 1 and 11 are likewise patentable over the combination of the Razavi, Fanning and Tosaya references. Accordingly, in addition to any independent bases for patentability, Applicant respectfully submits that claims 9 and 12 are patentable over the cited references by virtue of at least their dependence on claims 1 or 11, respectively, and requests that the §103(a) rejection thereof be withdrawn.

**§103(a) Rejection of Claims 10**

In paragraph 6 of the Action, claim 10 was rejected as being unpatentable over the Razavi and Fanning references in further view of a patent issued to Segal, et al. (US 6,167,251).

Without conceding the appropriateness of the combination or the obviousness argument, Applicant respectfully submits that the Segal reference was not cited as curing and does not, in fact, cure the deficiency in the teachings of the Razavi and Fanning references noted above. In particular, Segal fails to disclose or suggest a establishing a true, peer-to-peer wireless

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communication path(s) with a remote device to download a music file without a priori knowledge that the music file is available from the remote device.

Accordingly, Applicant respectfully submits that amended claim 1 is likewise patentable over the combination of the Razavi, Fanning and Segal references. Accordingly, in addition to any independent bases for patentability, Applicant respectfully submits that claim 10 is patentable over the cited references by virtue of at least this dependence on claim 1, and requests that the § 103(a) rejection thereof be withdrawn.

**§103(a) Rejection of Claims 16-20**

In paragraph 7 of the Action, claims 16-20 were rejected as being unpatentable over the Razavi and Fanning references in further view of a patent issued to Britt, Jr. et al (US 6,230,319).

Applicant notes that amended claim 16 includes elements similar to those described above with respect to claim 1 and, as such, Applicant respectfully submits that amended claim 16 is patentable over the Razavi and Fanning references using arguments analogous to those presented above in claim 1.

Applicant respectfully submits that the Britt, Jr. reference was not cited as curing and does not, in fact, cure the deficiency in the teachings of the Razavi and Fanning references noted above. In particular, Britt, Jr. fails to disclose or suggest establishing a true, peer-to-peer wireless communication path(s) with a remote device to download a music file without a priori knowledge that the music file is available from the remote device.

Accordingly, Applicant respectfully submits that amended claim 16 is likewise patentable over the Razavi, Fanning and Britt, Jr. combination of references. Thus, Applicant respectfully requests that the § 103(a) rejection of amended claim 16 be withdrawn.

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Applicant notes that claims 17-20 depend from patentable base claim 16 and, in addition to any independent bases for patentability, are similarly patentable over the cited references by virtue of at least such dependence. Accordingly, Applicant respectfully requests that the §103(a) rejection of claims 17-20 be withdrawn.

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Conclusion

The foregoing is submitted as a full and complete response to the Office Action mailed April 22, 2003. In view of the foregoing amendments and remarks, Applicant respectfully submits that pending claims 1-4, 6-27 are in condition for allowance and a notification of such allowance is respectfully requested.

Should it be determined that an additional fee is due under 37 CFR §§1.16 or 1.17, or any excess fee has been received, please charge that fee or credit the amount of overcharge to deposit account #50-0221.

If the Examiner believes that there are any informalities which can be corrected by an Examiner's amendment, a telephone call to the undersigned at (503) 264-3059 is respectfully solicited.

Respectfully submitted,



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Date: October 13, 2004

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